

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

<b>LOUISIANA-PACIFIC CORPORATION,</b>	)	
	)	
<b>Plaintiff/Counter-Defendant,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 3:18-cv-00447</b>
	)	
<b>JAMES HARDIE BUILDING PRODUCTS INC.,</b>	)	<b>DISTRICT JUDGE JON P. McCALLA</b>
	)	
<b>Defendant/Counter-Plaintiff/Third- Party Plaintiff,</b>	)	<b>JURY DEMAND</b>
	)	
<b>v.</b>	)	
	)	
<b>THE KRUSE BROTHERS, INC.,</b>	)	
	)	
<b>Third-Party Defendant.</b>	)	

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**MOTION FOR LEAVE TO FILE UNDER SEAL**

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Pursuant to Rules 5.2 and 26 of the Federal Rules of Civil Procedure, and Section 5.07 of the Amended Practices and Procedures for Electronic Case Filing (Administrative Order 167-1), and paragraph 17 of the Stipulated Protective Order entered by the Court (ECF No. 54), James Hardie Building Products Inc. (“JHBP”) respectfully moves the Court for leave to file under seal certain documents, specified below, that JHBP has filed in support of its amended motion for preliminary injunction against Louisiana-Pacific Corporation (“LP”) and the Kruse Brothers, Inc.

A party seeking to file a document under seal must provide “compelling reasons” and “demonstrate that the sealing is narrowly tailored to those reasons—specifically, by ‘analyz[ing] in detail, document by document, the propriety of secrecy, providing reasons and legal citations.’” *Beauchamp v. Fed. Home Loan Mortg. Corp.*, 658 Fed. App’x 202, 207-08 (6th Cir. 2016) (quoting *Shane Grp., Inc. v. Blue Cross Blue Shield*, 825 F.3d 299, 305-06 (6th Cir.

2016)). Generally, “only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence ... is typically enough to overcome the presumption of [public] access.” *Rudd Equipment Co., Inc. v. John Deere Construction & Forestry Co.*, 834 F.3d 589, 594-95 (quoting *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 546 (7th Cir. 2002)). While the public’s right to access court documents is paramount, *see, e.g., Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1176-81 (6th Cir. 1983), it is not without limits. Content-based exceptions to the public’s right of access can be made to protect, inter alia, trade secrets and the privacy rights of litigants or third parties. *Id.* at 1179.

Courts will also seal documents that contain (i) business information that gives a party the opportunity to obtain an advantage over competitors who do not know or use it, *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 2018 U.S. Dist. LEXIS 64259, at \*17 (E.D. Mich. Apr. 17, 2018) , (ii) business information that, if disseminated, might harm a party’s competitive standing, *id.*, (iii) a party’s financial records that, if disclosed, would give competitors extensive insight into its financial status, *Russell v. CSK Auto, Inc.*, 2017 U.S. Dist. LEXIS 67873, at \*7 (E.D. Mich. May 4, 2017) , and (iv) a party’s confidential information—*e.g.*, “market share data, sales trends and analysis, customer preferences, confidential agreements, pricing strategy, and marketing strategy”—that, if disclosed, would give competitors an “inside look” into its business strategies. market share data, sales trends and analysis, customer preferences, confidential agreements, pricing strategy, and marketing strategy. *The Proctor & Gamble Co. v. Ranir, LLC*, 2017 U.S. Dist. LEXIS 131141, at \*6-8 (S.D. Ohio Aug. 17, 2017).

This Motion is made on the grounds that the amended Motion and Memorandum filed in support of JHBP’s amended Motion for Preliminary Injunction refer to or attach as exhibits

sensitive, proprietary, and confidential business and commercial information that JHBP has designated as ATTORNEYS' EYES ONLY under the Stipulated Protective Order. In addition, JHBP's amended Memorandum refers to and attaches a document produced by LP and designated as "CONFIDENTIAL INFORMATION" under the Stipulated Protective Order.

JHBP respectfully requests that the following documents be filed under seal:

1. Those portions of the amended Motion and Memorandum in support of JHBP's amended Motion for Preliminary Injunction against Counter-Defendants that reference documents or information previously permitted to be filed under seal by Court Order (ECF No. 69).

A copy of the proposed sealed amended Motion and Memorandum will be filed contemporaneously herewith under seal.

WHEREFORE, JHBP respectfully requests that the Court enter an Order granting its Motion for Leave to File Under Seal and to grant JHBP any other relief that the Court deems just and proper.

Respectfully submitted,

ADAMS AND REESE LLP

/s/ Maia T. Woodhouse

Thomas Anthony Swafford, TN BPR No. 017578

Maia T. Woodhouse, TN BPR No. 030438

Rocklan W. King III, TN BPR No. 030643

Fifth Third Center

424 Church Street, Suite 2700

Nashville, Tennessee 37219

Tel: (615) 259-1450

Fax: (615) 259-1470

Email: tony.swafford@arlaw.com

maia.woodhouse@arlaw.com

rocky.king@arlaw.com

Adam F. Massey (*admitted pro hac vice*)

Adams and Reese, LLP

1221 McKinney Street, Suite 4400

Houston, Texas 77010

Tel: (713) 308-0113

Fax: (713) 308.4053

Email: adam.massey@arlaw.com

Tara L. Swafford, TN BPR No. 017577

The Swafford Law Firm, PLLC

207 Third Avenue North

Franklin, Tennessee 37064

Tel: (615) 599-8406

Fax: (615) 807-2355

Email: tara@swaffordlawfirm.com

*Counsel for James Hardie Building Products Inc.*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 9th day of August 2018, the foregoing was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. Mail, postage prepaid, and/or hand delivery. Parties may access this filing through the Court's electronic filing system.

Samuel F. Miller  
Nicholas R. Valenti  
Miller Legal Partners PLLC  
Fifth Third Center – Suite 2000  
424 Church Street  
Nashville, Tennessee 37219  
Email: smiller@millerlegalpartners.com  
nvalenti@millerlegalpartners.com

Brian T. Boyd  
William M. Leech III  
Law Office of Brian T. Boyd  
750 Old Hickory Boulevard  
Building 2, Suite 150  
Brentwood, Tennessee 37027  
Email: brian@boydlegal.com  
will@boydlegal.com

/s/ Maia T. Woodhouse  
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Maia T. Woodhouse